

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RICARDO E.,

Claimant,

and

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2011020806

OAH No. 2011020809

DECISION

These matters were heard by David B. Rosenman, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, in Culver City, California, on July 22, September 21 and 22, and November 8, 2011.

Ricardo E. (Claimant), who was not present, was represented by his sister, Elizabeth E. Lisa Basiri, Fair Hearing Coordinator, represented Westside Regional Center (Service Agency or WRC).

The parties presented oral and documentary evidence. The record was closed and the matter was submitted for decision on November 8, 2011.

Documents Added to the Record

During the hearing, the ALJ suggested that the documents identified below be added to the record to explain some of the procedural history of the matter and to explain rulings made during the hearing. The following documents are added to Exhibit 1:

- a. Letter from Rosa E. (Claimant's mother) dated June 20, 2011, requesting a continuance.
- b. Letter and Waiver of Time from Rosa E. dated June 21, 2011.
- c. Order Denying Claimant's Request for Continuance dated June 21, 2011.

d. Request for Reconsideration of Order Denying Continuance from Rosa E., dated June 23, 2011.

e. Continuance Order dated June 23, 2011.

f. WRC's Motion for Protective Order and to Quash Subpoena, dated July 19, 2011.

g. Claimant's Opposition to the Motion for Protective Order and to Quash Subpoena, dated July 21, 2011.

h. WRC's opposition to request for continuance, dated July 21, 2011 (no document was found containing the Claimant's request for continuance).

Evidentiary Ruling

At the hearing, Claimant objected to Exhibit 8 on grounds of relevance. It was received in evidence, subject to being stricken if the relevance was not established. The relevance was established during the hearing and Exhibit 8 remains in the record.

ISSUES

1. Should the Service Agency fund 744 hours per month of supported living services for Claimant?

2. At the time the Fair Hearing Request was filed (February 18, 2011), Claimant was receiving funding from the Service Agency for 20 hours per month of specialized supervision, 100 hours per month of respite, and 24 hours per month of personal assistant services. At present, Claimant also receives an additional 744 hours per month of personal assistance services. May the Service Agency change Claimant's services in the following ways: terminate funding for specialized supervision, reduce respite from 100 hours per month to 30 hours per month, and change personal assistant services hours from 24 hours per month to 474 hours per month?

FACTUAL FINDINGS

Claimant's Condition and Service History to 2009

1. Claimant is 28 years old and a consumer receiving services from the Service Agency based on his diagnosis of moderate mental retardation. Claimant has severely impaired receptive language and profoundly impaired expressive language skills. His speech is limited to vocalizations and occasional word approximations; most commonly, he gestures and uses physical prompts (e.g., grasping your arm and directing

you to the front door when he wants to take a drive) in order to make his needs known. He needs continuous supervision in all settings to ensure his safety. He needs verbal/gestural support for self care skills and physical assistance for toileting, showering, and grooming. Claimant is large in stature, strong and fast, and can be destructive to property. He has also been diagnosed with diabetes and irritable bowel syndrome.

2. There was a prior fair hearing resulting in a Decision (OAH case number 2229060393), dated September 18, 2009, by ALJ Mark E. Harman (2009 Decision, Exhibit 4) that Claimant's sister and WRC state is an accurate summary of relevant events up to that time. Therefore, Factual Findings 3 through 17, below, are based on the 2009 Decision. Please note that, in some instances, documents that were used as exhibits in the prior case and were referenced in the 2009 Decision were not admitted into evidence in the current matter. Nevertheless, certain acts, behaviors and tendencies of Claimant, his family and WRC that were noted in these portions of the 2009 Decision were often confirmed by or evident from the evidence submitted in the current matter. In some instances the Factual Findings from the 2009 Decision have been modified to reflect the evidence in the present matter and/or to depict information that is more relevant to the current issues.

3. The issue in the 2009 Decision was whether the Service Agency should fund for supported living services under a preliminary support plan prepared by the Institute for Applied Behavior Analysis (IABA). This plan from IABA is Exhibit C-15 in the current matter.

4. Claimant has lived his entire life in his parents' home. They are his conservators and they, along with his older sister, are very devoted to him. More than a decade ago, Claimant was receiving behavior consultation services for non-compliance and tantrum behaviors in the home. Historically, these behaviors included property destruction and physical aggression directed at both his parents and his one-to-one attendant. He threw objects, damaging the walls of the house. He would sling saliva at people, particularly when his requests were not met. He also kicked and slapped his parents. He has assaulted people while in the community. A behavior assessment was conducted by Behavioral Consultants & Associates in January 1999. His parents are quoted as saying, "he pretty much gets his own way." The behavior consultant recommended long-term out-of-home placement as the best alternative, as "his placement at home is inappropriate for long term functional skills and behavioral improvement." (This assessment report was an exhibit in the prior case but not in the present matter.)

5. As of the 2009 hearing, Claimant's family acknowledged that, due to the parents' age and health, they could no longer manage him. As early as 2002, WRC referred the family to various service providers to find appropriate residential placements, day care programs, or supported living services (SLS). In Claimant's individual program plan (IPP) resulting from a November 2006 IPP meeting, it was noted that at least three licensed residential facilities had considered him for either permanent placement or

respite placement for 21 days. (The 2006 IPP was an exhibit in the prior case but not in the present matter.) Claimant's severe behavioral challenges substantially impeded locating appropriate staff persons, agencies, and placements for him. WRC's efforts were unsuccessful because these programs were not a good match for Claimant or his parents were not satisfied with the facilities, programs, or staff; or Claimant's parents were unwilling to allow a service provider's staff and management to assume responsibility for managing Claimant's behaviors and medical conditions or providing his care. WRC also referred Claimant to Fairview Developmental Center (FDC) in 2005. FDC assessed Claimant and determined that it could not serve Claimant there. Its assessment team felt that Claimant could be appropriately served in a smaller, less restrictive setting in the community, and that he did not require the highly restrictive nature of a state developmental center "at this time." (This assessment report was an exhibit in the prior case but not in the present matter.)

6. In mid-2007, WRC referred Claimant to Dr. William Bernhardt (Bernhardt), a Board Certified Behavior Analyst, who conducted a behavior assessment to functionally assess Claimant's problem behaviors and to recommend supports and behavioral interventions designed to reduce or ameliorate his behavior problems. In his report (Exhibit C-9), Dr. Bernhardt recommended that Claimant be placed out of his family's home and into a supportive living arrangement. Claimant would "require the services of an intensively behaviorally trained support staff 24 hours per day, 7 days per week," to implement a professionally designed and supervised behavior intervention and treatment plan. In October 2007, WRC referred Claimant to IABA, a WRC vendor recognized for its ability to provide SLS to clients who had been unable to succeed in other placements due to challenging behaviors, and IABA was authorized to develop and implement an SLS plan.

7. In early 2008, IABA began crafting its plan to meet Claimant's needs in a supported living situation. Typically, supported living assistance begins while consumers are still in the family home, and later, the consumer transitions out. IABA proposed that Claimant remain in the family home, after a transition period in which his parents would move to another location.¹ IABA proposed to provide staff at a ratio of two staff for 18

¹ Previous behavioral assessments, including the analyses of Bernhardt, Behavior Consultants & Associates, and Diverse Journeys, Inc. (these last two reports were exhibits in the prior case but not in the present matter), had recommended that SLS take place separate from the family home and apart from family members. Diverse Journeys' plan specifically states that Claimant "has developed some very entrenched and maladaptive routines while in the family home over the past twelve years. It is believed that it would be virtually impossible to modify these behaviors, routines and habits in the current setting." Bernhardt wrote: "At this point . . . the home setting does not represent a good choice for behavioral programming. [¶] The home may also represent a 'setting event' for target behaviors much as a movie theater often cues popcorn purchasing by many theater goers." (Exhibit C-9.) Bernhardt also cited Claimant's parents' lack of follow-through concerning behavioral programming, and an on-going disagreement

hours per day, once Claimant was able to live independently from his family. Under the plan, for the other six hours per day Claimant would attend a day program called IABA-STEP. The 2:1 ratio would continue during an initial period of transition until Claimant's behaviors stabilized. IABA began implementing this plan. WRC appeared to cut off funding of this plan on July 31, 2008, but, for reasons not made clear by the evidence, WRC continued to authorize IABA to provide SLS for Claimant.²

8. For IABA's plan to become viable, it needed to hire and train staff members who were a "good match" for Claimant, i.e., able to work with a non-verbal adult who can be physically intimidating and become physically aggressive. The staff would also need to monitor Claimant's medical needs (he is diabetic), and ensure his safety and the safety of others at home and in the community. IABA's plan proposed housing that had plenty of open space, no common walls with another property, and certain modifications to increase safety. Under the plan, IABA would strictly manage the involvement of Claimant's family in the behavioral program, since the presence of either of Claimant's parents often was a precursor of Claimant's aggressive episodes with staff.

9. During the period that IABA was implementing its plan, WRC continued to fund 100 hours per month of respite through Cambrian Homecare (Cambrian), and 20 hours per month of specialized supervision. Claimant's family was granted 280 hours per month of In-Home Supportive Services (IHSS) to assist with Claimant's care. (IHSS is a county-funded program that does not involve WRC.) WRC funded Claimant's Saturday Interactive Program at Ability First in Long Beach, and a personal attendant who provided 1:1 supervision for Claimant while he attended the Saturday program. IABA began recruiting staff needed to support Claimant in an independent living situation, but while ramping up these services, for various reasons, IABA was unable to reach a level of staffing necessary to achieve this objective.

10. Between August 11, 2008, and November 27, 2008, IABA reported six incidents in which Claimant was physically aggressive toward either a family member or a staff person. Several incidents involved Claimant's parents "intervening" while services were being provided by IABA staff. A particular incident in September, in which Claimant struck a staff person when his mother entered the home, caused IABA to send a letter to Claimant's parents. IABA warned them that, when IABA staff was providing services, any unplanned appearance of family members in or around the home

between the parents on discipline methods. Nevertheless, IABA began providing SLS while Claimant's parents were still living in the home.

² WRC's letter of denial states: "[T]he Purchase of Services (POS) Committee [reviewed] your request for [Claimant] to receive IABA [SLS] at the rate of 18 hours per day / \$27,113.16 per month. The committee made the following decision: The request for monthly SLS at the above rate is being denied [as] the amount for this service is cost-prohibitive." (This letter was an exhibit in the prior case but not in the present matter.)

posed a serious risk to IABA staff, and the parents could not be present unless the family had made prior arrangements with IABA. During the four months that IABA provided SLS services in the family home, IABA reported the following incidents:

Claimant punched a staff person in the face, after throwing rocks at a car.

Claimant pushed another youth aggressively in the face at Ability First.

Claimant began to throw dirt at a car passing in front of the family home, which was typical behavior. He then threw dirt and a car mat at his father; he hit a staff person twice in the chest with the car door. After he was calm, another staff person took him for a drive. He began attacking the staff person driving the car, hitting her in the head several times until she pulled over.

Claimant grabbed a new staff person by the hair and hit and kicked her for four minutes. He assaulted another staff member who tried to intervene. Claimant's sister arrived and succeeded in intervening. A staff member received injuries, including bruises on her left eye, a cut lip and nose, and a scratch on her face. Claimant showed remorse after he had calmed down.

Claimant became agitated, pushed a staff member, and struck another in the face.

11. On November 27, 2008, Claimant's father became frustrated and yelled at IABA staff persons, used foul language and told them to leave the premises. At this point, IABA withdrew from providing SLS services in the family home, because it believed it was not safe for staff as long as the family remained living there. A meeting was called for December 8, 2008, between Claimant's family, WRC staff, and IABA staff. At this meeting, the parties renewed their commitment to pursue supported living services for Claimant through IABA. Direct supported living assistance would be provided by IABA staff only once Claimant had moved to another location, which IABA would help to find. During the interim period, IABA would train staff obtained through Cambrian, who would be Cambrian employees, to provide direct SLS in the family home. Once IABA had recruited and trained a sufficient number of acceptable staff persons, and found an appropriate residence for Claimant, then IABA would hire these people and begin to provide the direct SLS in the new location.

12. Following the December 2008 meeting, WRC Service Coordinator Karla Gray wrote a letter to Claimant's family which documented the Service Agency's understanding of the plan for future IABA services for Claimant. In substance, the letter states the following as the agreed-upon services. (This letter was an exhibit in the prior case but not in the present matter.)

- a. Twenty-four hour per day direct SLS once Claimant relocates to a living arrangement away from his family.

- b. Staffing at a 2:1 ratio if needed, for six months of initial programming, until Claimant's behaviors stabilize.
- c. Rental supplement not to exceed \$200 per month for four months.
- d. Personal attendant services, 14 hours per day, 2:1 staff ratio, during the interim period while Claimant remains in the family home.
- e. IABA to provide training and behavioral consultation to the staff performing services during the interim period.
- f. Finder's fee for finding staff who can work with Claimant.
- g. Continue to search for appropriate living arrangement and alternative living arrangements. Group homes and other placement options will serve as a back up plan, and in the event of crisis emergency respite.
- h. Locate a day program, including additional staff support as needed.
- i. Assist family in accessing any additional vendored and generic resources that may meet Claimant's needs.

The 2009 Decision did not set forth in any more detail the proposed time periods within which these various events would occur.

13. In April 2009, IABA submitted its "Supported Living Assessment and Preliminary Individual Support Plan" to Claimant's family and the Service Agency. (Exhibit C-15.) Under this plan, Claimant would move to Claimant's sister's two-bedroom house in Redondo Beach, within 10 miles of the family residence, and his sister would relocate. This home would be modified at a cost of \$5,200 to accommodate Claimant's tendency toward property destruction.

14. IABA calculated the need for a rent subsidy as follows: Claimant receives \$907 per month of Supplemental Security Income, of which \$400 would go toward rent, with the remainder used to pay for utilities and food. Claimant's family would contribute \$1,200 toward rent, and the Service Agency would be asked to contribute \$665. The Service Agency also would be asked to contribute \$400 per month as a deposit to cover any damage to property resulting from Claimant's intense behaviors. (Neither the 2009 Decision nor evidence in the present case explained whether the rent was for the use of the sister's home, whether the sister owned her home or rented at the time, or to whom the rent would be paid.)

15. IABA proposed that Claimant receive the support of a staff person 24 hours per day. During the first six months, while transitioning to the new living situation, there would be two staff persons during the day (16 hours). Two staff persons would provide

support through the night (eight hours) for the first 45 days of the transition. These levels would be reevaluated after the relevant periods to ascertain whether this level of support was still required. IABA would train the staff in meal preparation, personal care, monitoring medication and physical health, homecare, behavioral supports, and community integration. IABA's projected monthly costs for support services were as follows:

SERVICES	RATE PER HOUR, TIMES HOURS	TOTAL
Daytime Supports	\$23.70 x 992 (two staff persons)	\$23,510.40
Nighttime Supports	\$10.88 x 496 (two staff persons)	5,396.48
Rent subsidy		200.00-665.00
Property damage		400.00
MONTHLY TOTAL		~\$29,971.88

An additional one-time expenditure would include a security deposit (\$1,200) and furnishings (\$285). Claimant's family would agree to provide the majority of the other required furnishings.

16. Ms. Gray wrote a letter in May 2009, stating that WRC was unable to provide funding for IABA's plan because the plan was too costly. (This letter was an exhibit in the prior case but not in the present matter.) WRC was willing to support SLS as long as the cost was no more than \$20,000 per month, and claimed it communicated this limitation to IABA on several occasions; however, WRC presented no evidence, either through a written document or in testimony, that this requirement had been expressed to the parties. Further, WRC offered no evidence establishing any basis for such a limitation. To the date of the prior hearing in July 2009, WRC had been unable to locate an appropriate alternate placement in the community for Claimant, such as a group home. Claimant's family contended that, in the absence of any alternatives, WRC must comply with their agreement, made during the December 2008 meeting, to support the IABA plan.

17. In his 2009 Decision, ALJ Harman concluded that WRC did not establish that IABA's plan was unreasonable or cost-prohibitive. Even though the costs were substantial, WRC had agreed to provide SLS and had not identified other viable options that could meet Claimant's needs and would be more cost-effective. ALJ Harman ordered WRC to fund the IABA plan, adding that WRC could convene an additional IPP meeting to further review and assess these services if it became apparent that the plan was no longer able to meet Claimant's needs.

WRC's Attempts from 2009 to Present to Provide SLS and Other Services

a. Services by IABA

18. Since ALJ Harman's order, there have been numerous attempts to implement SLS services for Claimant, as well as assessments for such services by various vendors. Set forth below is a summary of the significant steps taken and information gathered.

19. A progress report from IABA for the period from June 16, 2009, to October 30, 2009 (Exhibit 7), provides a good snapshot of services and Claimant's behaviors. Claimant was receiving approximately 45 hours per week of services at a 2:1 staffing ratio. His sister's home was identified as an option, with 24-hour support. Claimant was involved in community activities, including swimming, trips to the airport and to a fast food restaurant. IABA was exploring a day program however there was insufficient program staff to work with Claimant. Claimant's parents would take care of him when the staff wasn't present. Often Claimant would not go to bed until 5:00 or 6:00 a.m. and was still asleep when staff arrived to start their shift. His parents were complying with IABA's policy of not being present in the home during service hours, and were communicating with staff at the beginning and end of their shifts. IABA was trying to hire more staff and, during the reporting period, had hired seven staff in addition to the two staff who had been working with Claimant for approximately one year. Of the new hires, two staff members requested to be removed and three staff members were removed at IABA's and/or the parents' request.

20. The IABA progress report also refers to Claimant's medical issues of irritable bowel syndrome and rectal digging, as well as many of his challenging behaviors, which are unpredictable and depend on a variety of factors including his health, home environment and sleep pattern. Also noted is that Claimant's mother and father have different ways of interacting with him and disagree on expectations and consequences, and that Claimant "is aware of this discord and at times plays one against the other." Behaviors noted include physical aggression, inappropriate touching in the nature of grabbing and hugging in a non-sexual manner, and rough play with staff. There were several incidents of property damage, including throwing clothes, shoes and other household items out of the window. He also throws dirt and mud at passing cars while out in the community. Claimant also engaged in self-injurious behavior. Staff was trying to teach him simple sign language and also use of a picture exchange system to enhance his ability to communicate. As Claimant was showing progress, IABA recommended that he receive 24-hour support in his own home.

21. An IPP dated November 24, 2009 (Exhibit 5), provides additional information on the situation and Claimant's strengths and challenges. He has very little verbal communication and additional challenging behaviors include spitting, verbal outbursts, kicking and hitting. He understands simple phrases only. He uses some sign language, but it is specific to him and not recognizable to others outside the family. Claimant does not have danger awareness and has few community safety skills. He gets upset when his daily routine is broken. "Per reports of family and previous professionals

that have worked with [Claimant] and his family, it has become apparent that [Claimant] has learned how to manipulate his mother to his benefit. Mother mostly complies with [Claimant's] wishes in fear that if she denies him immediate demands, he may become aggressive or engage in property destruction. Mother has a difficult time setting boundaries....” Most of the parents’ belongings are in the garage to avoid being destroyed by Claimant. The IPP includes a history of attempts at supported living arrangements, out of home placements, and interactions with various vendors. These agencies terminated services for various reasons, including instances when staff had been injured, a determination that the home environment was unsafe, or a vendor did not believe it could address Claimant’s needs in the home environment based upon the family dynamics. A statewide search for housing options was unsuccessful. IABA was to provide 417 hours of service per month through December 2009. Support services through Cambrian included 100 hours per month of respite service, 20 hours per month of specialized supervision, and 24 hours per month of personal attendance services, all through December 2010. This totaled 461 hours per month of direct services and 100 hours of respite.

22. In January 2010, WRC authorized IABA to provide 789 hours of services per month, through June 30, 2010, at a cost of \$117,447. IABA replied that the authorization did not include consultation hours. (Exhibit 6.)

23. IABA reported a series of incidents in March and April 2010. (Exhibit 8.) On March 16, staff arrived and no one was home. After contacting the family, staff was asked to wait two hours, but informed the family they could not. The report noted that this was the fifth shift cancelled in the past seven days. On March 23, Claimant’s father asked that a particular staff person not work with his son. When told that the staff person had only worked for three shifts and was still being trained, Claimant’s father requested to cancel the shift for that day. He raised concerns about numerous other staff people, and was reported to make racially insensitive remarks. On April 2, Claimant’s father had a verbal disagreement with staff and told one of them to leave and not come back. He accused a staff person of abusing Claimant. On April 19, Claimant’s father called staff into the garage and appeared angry with them and IABA. He used profanity. While moving his belongings, he raised a couch cushion which revealed a gun underneath. Staff felt threatened. When they reported the incident to their supervisor, they were instructed to leave. Claimant’s mother, who was not at home at the time, met with Karla Gray, the service coordinator, and explained that she had a permit for the gun, which had been retrieved from its locked location one night earlier when helicopters alerted the family to possible problems in the neighborhood. Although Claimant’s father had handled the gun that night and not given it back to her, she did not think that her husband knew that the gun was under the cushion. (See WRC consumer notes, Exhibit 10.)

b. IABA terminates services; Temporary services by ALSS

24. IABA terminated services for Claimant. Although there was no evidence of any resolution of the issue of consultation hours, it appears that IABA rendered services from January 2010 through termination in March in the amount of 789 hours of services per

month. Claimant's parents apparently asked for more respite, as there is a WRC consumer note dated May 6, 2010 (Exhibit 10), of a meeting to discuss that request as well as planning for other services. Other agencies would be contacted to provide SLS, and it was possible that Cambrian could supply additional services on a short-term basis. A referral was made to Modern Support Services to provide an SLS evaluation which was begun on May 26 (but not concluded until July 29, as discussed in more detail below). The family also asked for information on day programs, and received information from Ms. Gray, including the note that many day programs are not listed as behavioral programs or can only accept individuals with mild challenges. (Exhibit C-33.)

25. Claimant's family engaged an employee of Alternative Lifestyle Support Services (ALSS) to begin providing services on May 14, 2010, when Claimant needed care following eye surgery. According to a WRC consumer note dated June 7, 2010 (Exhibit 10) and a letter (Exhibit 9), the services began without the knowledge of ALSS's director, Pauline Jackson, and before any notice to WRC. WRC stated it would consider retroactive funding if the family provided a "draft schedule of IHSS and respite," and informed the family that new regulations established a limit of 30 hours of respite per month with an exception that required monitoring if the number of monthly respite hours was higher. WRC noted that ALSS was not categorized as a behavioral agency and Claimant's needs may be beyond their scope, but agreed to provide 60 days of services temporarily, starting June 1, while other options were pursued.

26. Claimant's mother was not happy with the June 1 starting date and wrote a letter of complaint to Pauline Jackson. (Exhibit C-29.)

27. At a time not established by the evidence but probably around the end of May 2010, ALSS prepared a service plan for Claimant for the period of June through December 2010 (Exhibit 14). The proposed services were by a personal attendant, with a suggested ratio of 2:1 when in the community with Claimant. The proposed schedule was 224 hours per month to cover eight hours per day, seven days per week, with emergency help available after hours. Another schedule was provided for overnight personal attendant services, of a total of 744 hours per month, based on a staffing ratio of 2:1 from 11 p.m. to 4 a.m. and a 1:1 ration from 4 a.m. to 7 a.m. However, the schedule of services attached indicated that there would be six hours per week of training and habilitation services and 72 hours per week of personal attendant services. (The total number of hours on each schedule does not match separate pages listing the service hours that were being requested.) This schedule was based on Claimant's schedule/routine of not falling to sleep until about 5 a.m. and sleeping until 12 noon or even 2 p.m. The proposed service schedules included some activities at home with a suggested staff ratio of 2:1, some outside activities with a suggested staff ratio of 3:1, and medical appointments with a suggested staff ratio of 4:1. The schedules do not include any reference to hours of IHSS.

28. On June 7, 2010, Claimant's mother and sister met with Ms. Gray and others at WRC to discuss SLS services and options and the status of services. According to the WRC consumer note (Exhibit 10), Ms. Gray explained that WRC could not provide

retroactive payment to ALSS and also inquired about using IHSS hours if the funding was denied. Possible day programs were also discussed. The family was not interested in SLS services by Modern Support Services (MSS) based on their belief that MSS would not take Claimant out of the home and MSS would not monitor Claimant's diabetes.

29. A planning meeting occurred on July 1, 2010. (See Exhibit 11 and the IPP Addendum Agreement, Exhibit 5.) Program options were discussed. Claimant had medical and dental issues that required monitoring. The family had used various staff through IHSS and would see if they were willing to work for ALSS. ALSS was providing mostly personal attendant services and, when taking Claimant into the community, ALSS needed at least 2:1 support. WRC requested the family to provide a schedule of IHSS and respite use to determine appropriate supports. Assessments would be requested from MSS and from the Shabani Institute.

c. Evaluation and proposal by MSS

30. MSS and WRC were attempting to have Dr. Tom Pomeranz, a behaviorist, play a role in performing a life study for Claimant to reflect his support needs as part of the MSS assessment. (See emails dated July 14, 2010, Exhibit C-28.) A meeting between WRC and Claimant's family occurred on July 29, 2010. (See Exhibit 10 and the IPP Addendum Agreement, Exhibit 5.) Subjects of discussion included speech strategies and technology, day programs, and other services and vendors. ALSS was to be funded for another month and MSS was to complete its assessment. WRC requested that the family submit a schedule of IHSS and respite.

31a. MSS submitted its SLS evaluation (Exhibit 15). Although the evaluation states it was prepared May 26 and July 29, 2010, on page 18 it refers to the report dated August 30, 2010, from the Shabani Institute, so the MSS evaluation must have been completed after August 30. Many prior behaviors and services are noted, setting forth a good picture of Claimant and his needs. IHSS hours are noted at 143 hours per month, although later it is reported that IHSS hours are unknown, there was no schedule of IHSS hours, and Rosa E. declined MSS's request for this information. Of relevance, the report noted that the current living situation would interfere with MSS's staff's ability to provide behavioral support. The initial plan was for a six-month transition wherein services would fade at Claimant's parent's home and begin at the home of his sister Elizabeth, whose property has two houses; she would move to a house in the back and Claimant would move to the front house. However, Claimant's parents objected to this plan and wanted Claimant to remain in their home. MSS did not believe that the parents' home was the best location for Claimant.

31b. According to MSS's report, Claimant requires intensive support and services 24 hours per day. The family requested intensive behavior supports through the Shabani Institute of eight hours per day, seven days per week for the first 30 days of SLS in the family home. (The report of the Shabani Institute, and its later declination to provide services, are discussed in more detail below.) MSS indicated it did not believe this level of

service by the Shabani institute was realistic or necessary, but it was willing to coordinate with the Shabani Institute as long as the training and services were compatible with MSS behavioral supports. Rosa E. informed MSS that she told a behaviorist in the past that she did not require training; rather, staff should be trained to learn how to provide supports to Claimant. MSS reminded Rosa E. that the goal was to relieve her from the stress of caring for Claimant and she must allow the staff to work without interference.

31c. The MSS report noted that there was very little routine to Claimant's day, and that some of the 2:1 staffing, at the direction of Rosa E., was engaged in cleaning as opposed to direct support of Claimant. Rosa E. stated she expected MSS staff to also clean up after Claimant. Rosa E. reported that daily activities were often directed by Claimant depending on which staff members were present. MSS suggested a specific routine including activities of daily living, skill development and added responsibilities for Claimant that would have beneficial behavioral results. MSS proposed having a dietician or physician recommend a diet and for nursing services to monitor diabetic blood sugar levels, as this was beyond the level of services provided under SLS. Claimant's psychotropic prescriptions were not monitored by a psychiatrist, so MSS proposed an assessment to determine if the medications were needed. Claimant had only been transported in the family car, and MSS proposals for public transportation training or Access Services were declined by the family. MSS proposed to be responsible for transporting Claimant only after he became comfortable with staff and decreased his inappropriate behaviors when in the community. MSS proposed to consult with Dr. Pomeranz on a life plan as well as the Shabani Institute to develop a plan to decrease negative behaviors.

31d. MSS proposed a weekly schedule where each day was divided into three time periods: 2 to 10 p.m., 10 p.m. to 6 a.m., and 6 a.m. to 2 p.m. The schedule included supports, activities and goals. The proposed staff schedule was for IHSS staff to cover the hours when Claimant was usually asleep, from 6 a.m. to 2 p.m. A 2:1 staff ratio was recommended during the 2 p.m. to 10 p.m. shift, with a note that the family had also requested that the Shabani Institute provide eight hours per day, seven days per week of behavioral support for the first 30 days of services. (The MSS report notes that the Shabani Institute recommended 35 hours per week "in staff/parent training and direct, 2:1 intervention format.") (MSS SLS evaluation, Exhibit 15, pages 17-18.) MSS recommended that the 2 p.m. to 10 p.m. shift was to be covered by two MSS employees and also by Shabani Institute. The MSS evaluation continues, noting that the 2:1 ratio was expected to fade to one staff for community outings as Claimant's behaviors decreased. For the 10 p.m. to 6 a.m. shift, MSS proposed one staff person, unless this was found to be insufficient.

31e. The following estimated hours and costs were provided by MSS:

<u>Service and number of hours</u>	<u>Total cost</u>	<u>Estimated start dates</u>
Transition services: 60 hrs/month @ \$32/hr Direct care: 248 hrs per staff, 2:1 ratio	\$1,920	10/1/10

(496 hrs/mo) @ \$27/hr	\$13,392	11/1/10
Asleep overnight	\$0	N/A
Awake overnight: 1:1 ratio, 248 hrs/mo @ \$27/hr	\$6,696	11/1/10
Administrative oversight	\$1,000	11/1/10
Shabani Institute: 35 hrs/week	TBD	TBD

d. Assessment and proposal by The Shabani Institute; WRC plan for services

32. Dr. Shabani prepared a functional behavior assessment, dated August 30, 2010 (Exhibit 12). Claimant was observed and his mother, father and sister were interviewed. In his report, Dr. Shabani acknowledged that his data confirmed the results previously obtained by Dr. Bernhardt and that his recommendations were consistent with Dr. Bernhardt's treatment plan. Based on an analysis of the information gathered, Dr. Shabani made 13 recommendations regarding behavioral interventions. These included changes to Claimant's environment to reduce or prevent problem behaviors as well as post-behavior interventions. The first recommendation was to extinguish reinforcement for problem behaviors. This included withholding access to preferred tangibles. This procedure was to be implemented under direct supervision of a Board Certified Behavior Analyst. The second recommendation was to use differential reinforcement of alternative behaviors. This would include functional communication training, which could be a vocalization, sign, picture or gesture. The third recommendation was use of non-contingent reinforcement using highly preferred tangibles based on time and not occurrence of a problem behavior. The fourth recommendation was for use of a request sequence such as easy to follow requests. The fifth recommendation was a multiple schedule of reinforcement; sixth was a visual and written schedule providing predictability and routine for transitions. Seventh, it was recommended that a multiple stimulus preference assessment be conducted two times per week to identify Claimant's preferred items or activities to be incorporated into the behavioral treatment plan. The eighth recommendation was adoption of a standard safety behavior management protocol during behavioral interventions with Claimant. The ninth recommendation was for introduction of behavioral skills training with Claimant's family, based upon applied behavior analysis. Also recommended was an appropriate day program, that the proposed goals and objectives be adopted for at least six months, that the strategies be introduced in a gradual fashion with intense training and supervision provided by a Board Certified Behavior Analyst, and that the interventions be implemented for 35 hours per week in a staff/parent training and direct, 2:1 intervention format. Finally it was noted that the plan and recommendations would be most effective if all individuals with significant contact with Claimant consistently follow the outlined procedures. Dr. Shabani stressed that, for the plan to be effective, the family would have to "reconcile their beliefs and approaches to dealing with [Claimant's] problem behaviors" with the recommendations, and there would need to be "significant changes in the manner in which family members interact with him in order for the behavior plan to be effective." (Exhibit 12, p. 6.)

33. A consumer transaction note summarizes a meeting at WRC on October 27, 2010 (Exhibit 10 and Exhibit 17), among several WRC personnel with no family members

present. A transition was to be planned so that services could be conducted in Elizabeth's home hopefully by the beginning of 2011. Service providers were to determine the appropriate transition plan. It was recognized that the combined effect of MSS and the Shabani Institute staffing might be 4:1 support, which may be too overwhelming for Claimant. This was to be reviewed. The family was to be informed that if Claimant relocated, IHSS hours would be relinquished to be included in part of the support hours and that respite would be cut since he would be out of the home. WRC realized it was crucial that Claimant's parents be in agreement with the service delivery recommendations and respect the limitations set, with the note that it had been historically difficult for services to be provided in the home due to parental interference. Also noted is that this was likely WRC's final attempt to offer SLS services, as there were no further resources available. Because Claimant's family had some difficulty with allowing others to take control of his daily routine in the past, an alternate plan was discussed of parent-coordinated SLS with the following supports: 24 hours of personal attendant support, behavior consultation from Dr. Shabani, IHSS by parents to allow for 2:1 support during most of the day, and respite services would be decreased to 30 hours per month. It was anticipated there would be meeting with the family on November 5.

34. According to a consumer transaction note from November 4, 2010 (Exhibit 10 and Exhibit C-27), Dr. Shabani indicated that he was not able to serve Claimant due to staffing changes. Claimant had been taken to the hospital due to severe pain and a planned meeting with the family for the following day would be postponed. MSS believed that its staff could successfully redirect Claimant's behaviors and that Elizabeth's home was acceptable. MSS wanted to begin services in the separate home and not provide transition services in the parents' home. Two months of transition was anticipated.

35. An IPP meeting took place on November 18, 2010, summarized in the IPP (Exhibit 13) and a consumer transaction note (Exhibit 10). In addition to historical information, the IPP notes that the family had often raised concerns that vendors' staff had not been adequately trained and had not dealt with Claimant appropriately. The family claimed that IABA staff had attempted to steal money and other items from the home. During IABA services, Claimant was able to relate to some staff members and make some improvement. MSS believed that a 2:1 staffing ratio was appropriate, but not needed overnight, in an attempt to normalize a schedule. For transition, MSS management might provide additional staff. The family felt that a 2:1 ratio was needed all the time with possibly a higher ratio when Claimant was in the community. MSS was to determine if more staff was needed once services began. MSS did not recommend that services be provided in the family home and would look at Elizabeth's home or explore other locations in the community. Modifications to Elizabeth's home were discussed. Staffing was to start at 4-5 hours per day, 5-6 days per week, and be gradually increased. IHSS hours would be provided in the parent's home until Claimant transitioned to full-time SLS. It is noted that 283 hours per month of IHSS was being received. MSS would not perform housekeeping tasks but would attempt to teach Claimant how to participate in cleaning up after himself. MSS services were authorized through December 2010 to allow it to hire staff and then gradually increase hours. The family was informed that Cambrian respite would be

eliminated once Claimant transitioned to full-time SLS. Although Claimant was receiving 744 hours per month of support from ALSS, the family was informed that those hours would decrease and eventually terminate when MSS increased their hours. WRC and Claimant's family hoped to develop rapport with new staff and each other, and treat each other with respect. The family was advised that they were expected to comply with clinical recommendations in order for MSS to provide effective services. A service agreement contract might be prepared to clarify specific expectations. Also discussed was the option for parent-coordinated personal attendant services, as it was unknown if SLS would be successful or was the best option. The family was informed that MSS was the last resource identified by WRC for SLS services. The following funding was approved: MSS, 146 hours of SLS through 12/31/10, with the expectation that more staff would be hired; Cambrian to provide, through 12/31/10, 100 hours per month of respite (to be decreased pending transition to SLS and an increase in MSS hours), 20 hours per month of specialized supervision, and 24 hours per month of personal attendant services. WRC would also fund ALSS to provide services for 744 hours per month through 12/31/10, to be decreased prior if MSS increased its services. Claimant's family signed the IPP to indicate only that they were present and not to indicate that they were in agreement with the IPP.

36. Emails dated November 29 and 30, 2010 (Exhibit C-25) establish that the family was requesting funds to modify Elizabeth's home and wanted updates on consultations by a nutritionist, nursing, and a speech therapist. Ms. Gray replied that she was working on arranging the consultations, that MSS was authorized to begin as of December 1 through December 31, and that, because housing modifications were based on an assessment by IABA dating from April 2009, a new repair list and estimate should be prepared by MSS.

e. MSS services in January 2011; the MSS contract

37. For reasons not explained by the evidence, MSS did not begin services until January 5, 2011. A special incident report dated two days later (Exhibit 20) indicated that Claimant would hit SLS staff daily and was observed to hit another agency's staff (assumed to be Cambrian attendant care staff). MSS staff reminded Claimant not to hurt people and requested an apology, which Claimant provided by a sign. It was recommended that a behaviorist identify protocols and training to reduce aggressive behaviors, but noted that the behaviorist identified by the family (Dr. Shabani) had discontinued services. SLS services with MSS were being interrupted as of January 7 because the family had declined to sign an SLS contract.

38. The only MSS contract for SLS in evidence (Exhibit 16) indicates it is a revised contract as of January 12, 2011. It was signed by Claimant's parents on March 22, 2011, and by the new service coordinator, Erica Beall, on March 31, 2011. This contract has 25 numbered paragraphs that show that MSS was aware of specific issues relating to providing SLS services to Claimant. For example, the contract provides that all suggestions, recommendations and requests must be discussed with MSS management prior to implementation, and that only MSS management will have the right to make requests of

their staff. Claimant and his family must follow MSS's grievance procedure for complaints they wish to make. MSS agrees to provide daily summaries of events, weekly e-mail summaries, and telephone contact with the family. Medication administration and glucose testing was to be done by Claimant's parents or other licensed agencies until a SLS medication guideline was established and WRC authorized and trained MSS staff. The home was to have appropriate door locks, according to fire codes, and the family was to provide two sets of keys in order for staff to exit the home at their own will. Paragraph 21 states: "family must not be present in the home during MSS shifts. Should there be circumstances that require family to be in the home, family must not engage in behavior that under minds [sic] the quality of [Claimant's] life." Major housecleaning and errands were to be provided by IHSS staff during MSS shifts, but MSS staff would assist Claimant with minor household maintenance only. Paragraph 25 states: "Family must pre-schedule meetings with MSS management outside of MSS shifts and must not continue to hold meetings during or after shifts."

39. The subject of door locks was a continuing concern to MSS and to the family. The family noted that no prior SLS evaluation or provider had required the types of locks that MSS requested. The family was concerned that Claimant could escape from the home without proper supervision if doors were not locked properly and keys were available. MSS insisted that it was only requiring locks that were according to fire codes for residential homes and its staff would provide appropriate supervision and safety for Claimant.

40. A meeting between WRC personnel and the family which was to be held in late January 2011 was postponed due to a death in the family and illness of family members. Another meeting was tentatively set in mid-February 2011. (Exhibit C-24.)

41. Consumer transaction notes by Ms. Gray in the January and February 2011 indicate the following events and discussions occurred. (Exhibit 17.) A note from a January 12, 2011 meeting between WRC and MSS indicates that Claimant's family did not like the original, form SLS contract provided by MSS. Therefore, MSS developed the specific contract for Claimant. MSS expressed concern that it had seen the parents arguing in front of Claimant and other staff, and spoke disrespectfully towards staff. Claimant's mother had brought in prospective hires without consulting MSS. MSS expressed that the parents appeared to treat Claimant like a baby and did not afford him appropriate respect. The concern about door locks was discussed, as keys were needed to open locks and might create a hazard. Also noted were window bars with no latches, as well as MSS's concern about responsibility for cleaning the house. Also discussed in this meeting were concerns about glucose monitoring, medication administration, a nutritional assessment, relocation of Claimant and modifications to another home if needed, and the family's request for a day program.

f. Events leading to the Notices of Proposed Action and Fair Hearing Requests

42. WRC personnel met to discuss services and changes on January 27, 2011, and a consumer transaction note of that date indicated that the family was receiving 744

hours per month of personal attendant services in addition to 144 hours per month of combined respite and support, and 283 hours per month of IHSS. It was thought that there was some duplication between these services and that respite could be reduced. It was also noted that ALSS's contract with WRC would end as of February 28, 2011. As there was no signed contract with MSS at that time, other service options were discussed, such as a proposal for just personal attendant services, with no services for hours while Claimant was sleeping or for services covered by IHSS, and for limited respite hours. Specialized supervision hours would be eliminated, as both parents were present and available to provide care. The WRC team noted that despite the family's claim that Claimant required considerable support, they had not provided to WRC a schedule of how current staff was scheduled and utilized. This January 27, 2011 consumer transaction note does not indicate whether the participants considered the documented desire of the parents to reduce their involvement in providing care based upon their advancing age, medical conditions and the stress of providing such care.

43. On February 10, 2011, a consumer transaction note indicates that the family was to be informed by letters of WRC's decisions, including that WRC would not fund for MSS past February 28, 2011, as no service agreement was signed. Also WRC had terminated its contract with ALSS and ALSS could no longer provide services. WRC was proposing 474 hours of personal attendant care, which was 24-hour care minus the hours provided by IHSS. Respite care would be cut gradually to 30 hours per month. Specialized supervision would be cut, as Claimant did not qualify for the service. There was also an attempt to set up a meeting with the family, however finding an available date proved to be difficult.

44. Also on February 10, 2011, Ms. Gray sent two letters indicating the actions to be taken, and prepared two Notices of Proposed Action. In the first (Exhibit 2), WRC offered 474 hours per month of personal attendant care in lieu of ALSS, whose contract with WRC was being terminated. This was to be effective April 1, 2011. The letter explained that MSS could not provide services without a signed contract, and there had been several attempts to schedule a meeting to finalize an effective service plan. The letter noted that 474 hours per month of personal attendant care, combined with IHSS hours, "would provide the 2:1 ratio as needed during community outings." It was also proposed that these hours be provided through a third-party agency. WRC would explore additional resources for behavioral training, to be provided directly to Claimant and to caregivers including family, IHSS staff, and personal attendant staff. The primary focus of the training would be to provide the caregivers "with strategies to ensure basic safety, implement a routine, and meet his basic care needs. This support will be time-limited, in an attempt to stabilize his behaviors and so that he may have more opportunities in the community, and perhaps attend a day program."

45. In the second letter and Notice of Proposed Action dated February 10, 2011, (Exhibit 3) WRC proposed an amendment of all Cambrian support, including termination of 20 hours per month of specialized supervision; gradual decrease of respite from 100 hours per month to 30 hours per month; and an increase of personal attendant hours from 24 hours

per month to 474 hours per month. The effective date of these changes would be April 1, 2011. The letter explained that specialized supervision was designed for consumers who required care when parents are at work or at school, and was implemented to assist Claimant to prepare to go to school. As he was not then in school or attending a day program, and the parents were available to provide care, WRC would no longer fund the service. Reduction in respite was proposed pursuant to Welfare and Institutions Code section 4686.5. Reference was again made to increasing personal attendant services from 24 hours per month to 474 hours per month.

46. On February 16, 2011, Rosa E. signed two Fair Hearing Requests, related to the two WRC letters of February 10, 2011. (Exhibits 2 and 3.) In one, she requested that the services of ALSS be continued. In the other, she stated that Claimant needs the Cambrian hours and services “to effectuate a proper transition into an appropriate supported living agency.”

47. A nutritional assessment was prepared on February 10, 2011 (Exhibit 18). The assessor gathered information about Claimant’s unusual schedule, meal and snack habits, and noted that Claimant did not appear to be overweight. No meal plan was given “because of the different lifestyle.” Blood sugar levels were within normal or near normal levels, and it appeared that Claimant’s mother was aware of his blood sugar levels before meals and adjusted his medication accordingly. Also recommended were two to three snacks at scheduled times, and for nursing services to check blood sugar levels before meals.

g. Further discussions of services; attempts for MSS to begin providing services

48. WRC staff met with Claimant’s mother and sister on February 24, 2011, to discuss the proposed changes to Claimant’s services. The meeting is summarized in a consumer transaction note (Exhibit 17) and a letter from Ms. Gray (Exhibit 19). According to the note, the family referred to a letter from Claimant’s mother and father dated February 24, 2011 “indicating the terms the agreed upon regarding these changes.” Unfortunately, this letter was not submitted into evidence at the hearing and neither Ms. Gray, Elizabeth E. or Rosa E. testified to any changes in services that were agreed upon. Claimant’s mother and sister expressed that he needs 4:1 support, but WRC felt this level was not justified, referring to the assessments by Dr. Bernhardt and the Shabani Institute. Elizabeth E. claimed the Bernhardt assessment was not current or comprehensive. The family was concerned that current staff would not be paid after the ALSS contract ended in March, and WRC discussed that the staff could move to a third party vendor, Premier, to continue to provide personal attendant services and be paid. In a discussion of day programs, Elizabeth requested that Claimant have 2:1 staff provided by WRC in addition to day program staff. WRC replied that this level was excessive, but WRC would consider providing 1:1 staff while Claimant was in a day program. It was agreed that a meeting would be arranged with MSS to explore SLS services, however MSS would not proceed without a signed service agreement. The family insisted that Claimant needs 2:1 staff at all times. WRC

suggested possible group home placement, but the family did not give consent to explore this option. Claimant's mother again expressed that she is overwhelmed by his needs.

49. Apparently a meeting with MSS occurred on May 13, 2011, to introduce potential staff persons to Claimant and the family. MSS experienced hostility from the family. This is referenced in two letters from JoAnne Williams at MSS to the Claimant's parents dated May 17 and 27, 2011 (Exhibit 16). In the May 17 letter, Ms. Williams noted that at the May 13 meeting MSS identified three issues that had to be resolved before it could start services: locks on the doors must meet fire codes and allow staff to exit; outlets must not be exposed; and the home environment "must not be hostile and must be free from interferences from family." Ms. Williams requested to be contacted when the issues were resolved to schedule a start for services. In her May 27 letter, Ms. Williams acknowledged receipt of the family's letter dated May 26. This May 26 letter was not submitted in evidence at the hearing. Ms. Williams wrote that she was addressing the family's concerns listed in the May 26 letter by stating the May 13 visit was not a property inspection but, rather, an attempt to introduce possible staff. The family requested a further meeting with potential staff, which MSS could not provide as they were not yet employed. The concern was that MSS did not believe it was appropriate to discuss Claimant's specific needs at such an early meeting and not until a person became an MSS employee. The family wanted MSS to provide medical services. MSS replied that it was not yet providing SLS services and the contract included that the family would do glucose testing until WRC authorized MSS to be trained to do this. MSS agreed to review and implement recommendations from the nutritional and nursing assessments. Ms. Williams again noted the issues about locks and outlets, and repeated that the family had been yelling and was argumentative and hostile during the May 13 visit. Finally, Ms. Williams noted that time was passing and prospective employees could not be expected to wait too long for a job offer.

50. Evidence was submitted of medical issues concerning Claimant's family, to establish both that his parents are experiencing health issues and that meetings had to be postponed. For example, Rosa E. was taken to the emergency room May 30, 2011 (Exhibit C-19). On June 23, 2011, Elizabeth E. notified WRC that she and her mother were ill and her mother was taken to a doctor, and a meeting should be postponed. (Exhibit C-18.)

51. For reasons not completely explained by the evidence, there was further delay in implementing services by MSS. In a series of emails (Exhibit C-21 and C-34), on July 6, 2011, Elizabeth E. requested that a time be set to begin MSS transition services. She wanted to know how the family could comply with conflicting contract provisions that, on the one hand, required them to do glucose testing and medication administration until MSS was authorized, and on the other hand to not be present while MSS was providing services. Jack Darakjian of MSS responded on July 11 that MSS did not need family members to be present; MSS would provide the services set forth in the SLS agreement. He noted that SLS is not typically provided in a family home, and that MSS was accustomed to providing services without family members being present. MSS

was not aware whether the three issues outlined earlier had been resolved (i.e., locks, outlets and hostile environment). On July 13, Elizabeth E. responded that there was still uncertainty about whether the family, MSS or a separate nursing service would provide certain medical services and asked whether MSS had tried to resolve the issue with WRC. Regarding locks and outlets, she pointed out that prior service agencies had not complained and that the locks were necessary because Claimant was a safety risk to elope. She stated the family was not opposed to making reasonable changes, but believed the locks were a “personal preference” of MSS that would not be changed because of the belief that Claimant would be endangered. Mr. Darakjian responded the same day that all conditions of the MSS service agreement must be met. For MSS to do glucose monitoring, he needed written approval from WRC and staff training. If not, a nursing agency was needed. He insisted that the locks be changed, and suggested that services be allowed to begin with the possibility of changing the plan based on Claimant’s needs and changes in behavior.

52. Further emails in August and September 2011 (Exhibit C-34) include notification from WRC to Elizabeth E. on August 4, 2011, that MSS would not proceed until the three issues were resolved. Although Elizabeth E. wrote on August 8 that her prior emails and conversations had responded to MSS’s concerns, these responses did not resolve the issues. On August 18, a new service coordinator, Charlene Williams, notified Elizabeth that information packets had been sent to six day programs. Later, Ms. Williams notified Elizabeth that none of the programs thought they could accommodate Claimant. Ms. Williams testified that some of the programs had prior experience with Claimant and felt the family had interfered and not allowed services to go forward. A nursing assessment had taken place in January, and in August there were emails exchanged in an attempt for the nurse to get consent from the family so she could confer with the doctor about glucose monitors. On August 26, 2011, Ms. Williams, informed Elizabeth that MSS was willing to go forward but only if the family complied with the terms of the service agreement, and specifically referenced the issue of the door locks. As of September 12, 2011, Ms. Williams was attempting to set up a meeting with MSS to provide “clarity in an effort to move forward” with their services. There was difficulty finding an available date. In the last email, dated September 19, 2011, Elizabeth expressed frustration “by the failure and refusal of MSS to commence services” and stated that “WRC has elected not to intervene to get these necessary services started or assist in finding another vendor.” Ms. Williams testified that she had recent contact with a vendor for supportive day programming, We Care About You.

53. Claimant’s family obtained a letter from his treating physician, Mitchell Wong, M.D., Ph.D., dated July 11, 2011 (Exhibit C-17), which references Claimant’s medical conditions and challenging behaviors. Dr. Wong wrote that Claimant required assistance for activities of daily living and because he is physically strong and can be stubborn and have behavioral outbursts, he required the assistance of four people in addition to the family.

Testimony of Witnesses

54. In her testimony, Lisa Basiri of WRC summarized the history of some services for Claimant, including a 1999 behavioral assessment by Dr. Brown, who recommended an out-of-home placement; Creative Support Systems in 2001 to provide independent living services training; a 2002 day program called Morning Sky that Claimant attended for six to eight months; attempted SLS in 2002 and 2003 by the Exceptional Children Foundation that could not go forward; efforts from 2004 through 2009 to attend the Ability First social and day program; attempts at the Work in Progress day program that the family terminated; an assessment for possible placement at Fairview Developmental Center that determined Claimant's needs could be met in the community; a behavioral assessment by Stephanie Young and Associates, who specialized in placing consumers who were returning from developmental center residency; a brief residential placement that didn't work out; as well as exploring SLS with several agencies including My Life Foundation, Diverse Journeys, IABA, ALSS and MSS, and day programs such as Morning Sky, Work in Progress, Ability First and Empowertech. A referral for temporary respite placement was made to the Good Life Home, but the family did not feel it was equipped to support Claimant. According to Ms. Basiri, the family has at times disagreed with service recommendations and terminated some services, and in other instances providers had declined to start or continue services.

55. Ms. Basiri recounted how WRC had considered agencies in its own area and agencies that were not specialists in behavior support, as well as other regional center vendors and agencies suggested by Claimant's family (such as the Shabani Institute and an employee of ALSS). The most recent decisions were based on the concern that no SLS agency was available to begin services. The proposed hours would provide basic care and supervision, but would not include extensive or advanced behavioral services designed to effectively modify Claimant's behaviors.

56. As noted in more detail above, WRC made several requests for the family to provide information on how it was utilizing the services that were authorized by WRC (such as personal attendant and specialized supervision), as well as the IHSS hours granted by the county. (See, for example, Factual Findings 25, 29 and 31a.) The contentions of Claimant's family that they either supplied that information, or it was included in other documents, are not supported by the evidence. For example, the proposed schedules of services by MSS (Exhibit 15) includes the use of IHSS hours, but is not meant to be a description of how the family was actually using IHSS hours. The family simply did not provide the requested information, despite repeated requests.

57. The testimony of Elizabeth E. mirrored many of the observations and evaluations relating to Claimant's behaviors and past services. In her opinion, Claimant exhibits extreme behaviors in part because of his inability to communicate effectively. He has shown progress in the past but now has regressed and may need more support now than

ever. In her opinion, the Shabani, Bernhardt and MSS reports all say 2:1 support is needed, although this is not a correct statement of those reports, as noted above and discussed below. In practice, staffing can include parents and two staff for car rides and two staff when Claimant is showering. She testified that the family has asked WRC to “push” MSS to begin the SLS program and asked for a behaviorist to train existing staff so they are ready when MSS begins SLS plan. Other than issues of nursing/medical monitoring and door locks, she is not aware of any other barriers to MSS providing SLS. With respect to IHSS hours, she testified that no one at WRC told family that if a schedule of services and hours was not submitted that services would be cut, and that IHSS hours and hours of trained behavioral support are “like apples and oranges.” She believed that WRC received a copy of the award of IHSS hours, but was informed they had not. At present, staff spends a lot of time cleaning up after Claimant, and some IHSS hours are used for this purpose and not for caretaking of Claimant. The family trains caregivers in Claimant’s means of communicating by specific gestures, and tries to keep him entertained at home and teach some basic skills, use TV, calm music, and children’s stories. Elizabeth is very concerned about the stress and family health concerns of her parents and herself relating to Claimant’s situation and ongoing needs.

58. Karla Gray’s testimony also covered many of the subjects and facts set forth above. Based on her review of prior reports, she agrees that Claimant needs trained staff, sometimes at a 1:1 ratio and sometimes at a 2:1 ratio, and that a 2:1 ratio will most likely be needed as Claimant is weaned off present services and transitioned to new services. She explained that prior reports are useful, and can be reviewed by a new vendor, but any new vendor will do a new evaluation as part of the process of creating a service plan. An out-of-home placement was tried once but was not successful, and since then there has been no clear indication from the family that WRC should locate one. Ms. Gray does not think the family home is the most appropriate environment for Claimant to receive services. Other of her clients with high level of needs have been successful in living situations outside of their family home. In Ms. Gray’s experience, a 2:1 staffing ratio is the maximum support staff she has seen. If that is to be exceeded, WRC must have information on when and why the higher level would be justified. Claimant’s case required more time for case management than any others on her caseload. She agrees that with the personal attendant services in the last year, Claimant’s behaviors have not stabilized.

59. Ms. Gray explained many of the factors that were considered by WRC in January 2011 in forming the proposal to reformat services. The 2010 IPP suggested service levels on the assumption that there would be a transition to SLS, which never happened with IABA. The interim plan of 744 hours of monthly personal attendant support and other supports was an option for services in the home if SLS did not work out. This level was considered as in the nature of aid paid pending, because it was the amount of services that had been provided by ALSS, but ALSS was no longer contracted to WRC. The ALSS services were not structured as behavioral support. But WRC did not intend to continue at the level of 744 hours plus 140 hours. For example, if services were to be just for a personal attendant, respite hours could be cut. The 2010 IPP provided for the service levels to be funded only through December 13, 2010. The level of services in the 2010 IPP were in

anticipation of certain events that never took place: specialized supervision was approved while Claimant was looking for and transitioning to school or a day program, but there were now none on the horizon; service hours were added for behavior management while transitioning to an SLS plan where Claimant would move from his family's home, but that plan did not materialize and is not now planned for the foreseeable future. And there was some expectation, while Claimant lived in the family home, that the family would be providing a portion of his care as natural supports. Therefore, WRC looked to reformat Claimant's services to a combination of respite and personal attendant care and incorporate IHSS hours to find the best way to utilize the services. Although WRC had asked for information on their use of IHSS hours, the family never supplied it. Also considered was a new law limiting respite hours unless an exception was justified, so Ms. Gray also asked the family for information on how respite hours were being used. Without this information from the family, WRC was forced to create a plan without that data. Moving forward from the 2010 IPP, and after services by MSS were stalled, there were no other SLS providers that she was aware of. WRC had exhausted all of its options.

60. Testimony was received from Kendra Oliver, who was IABA's Assistant Director of Supported Living Services. IABA worked with Claimant from February 2008 to April 2010, and Claimant was one of their most severe cases. At times he could require a 2:1 staff ratio, and more might be needed for a non-preferred activity like visits to a doctor or dentist, which may require four staff and his parents for support. She testified that the parents' actions often interfered with IABA's services. The parents' presence was not part of the IABA plan, as many challenging behaviors were triggered or exacerbated by the parents' presence. For example, Ms. Oliver believed that Claimant had a preference for being with either just his parents or just IABA staff, but not both at the same time. Nevertheless, Claimant's parents insisted on both the family and IABA staff being present for Claimant's birthday, and Ms. Oliver recalls there was always an incident as a result. When IABA started, staffing needs were at a higher level, but were lowered as Claimant became more stabilized. IABA had locks with color coded keys to keep Claimant in the home. For the transition period, IABA recommended two staff even during Claimant's sleep times because disruptions were expected due to the changes in routine and people. The family, however, never permitted IABA to provide overnight hours. Based on her experience, transition is likely to be a long process, perhaps six months or as long as 18 months. In Ms. Oliver's opinion people working with Claimant in the community need behavioral training. He is eager to learn and the ideal paradigm is for 2:1 staffing with training and behavioral management taking place. There is always something happening with Claimant, or the possibility of something happening. She believes the proposed reduction in hours is not sufficient because Claimant needs training and behavioral intervention, and the hours proposed by WRC would not maintain Claimant's health and safety at home and in the community. She stated that personal attendant care will not stabilize his behaviors and recommended behavioral support.

61. Claimant's mother, Rosa E., also testified and covered many of the subjects and facts set forth above. She stated she was never told her that service hours would be reduced if she did not provide a schedule of how they were used. She discussed Claimant's daily

schedule with several folks at WRC. Rosa and the family have created community activities for Claimant. She will drive, along with her husband, Claimant, and a caregiver. For example, they may go to Hollywood Boulevard, the Long Beach harbor to watch ships, or to the airport to watch planes. Claimant will stay in the car and watch while his mother interacts with people and characters in the Hollywood area or by the wax museum. She may pay street performers and characters to come to the car to say hello. Elizabeth will come to their home every day after work, and will often take Claimant to her house, with the help of paid caregivers. She receives 273 hours per month of IHSS. The approved IHSS workers are Claimant's father and Elizabeth. Rosa suffers from medical issues and is very stressed by the situation related to Claimant. She would like to have MSS provide SLS services, but MSS has told her they cannot take blood pressure or glucose readings. MSS wants different door locks, but she is afraid Claimant will get out of the house and may be injured

The Parties' Contentions

62. Claimant contends, among other things, that the evaluations, assessments and IPP's establish that Claimant requires a staffing ratio of 2:1 at all hours of every day. This contention is not supported by the evidence, as discussed below. Based on this unsupported contention, Claimant would need 48 hours of services per day, or 1,488 hours of services per month. Further hours may be needed if the staffing ratio was increased beyond 2:1 for community outings or doctor visits. Claimant argues that the present service level of 744 hours only allows for 1:1 staffing 24 hours per day, and the proposal to reduce services to 474 hours per month would fund 1:1 staffing for only 16 hours each day, which does not meet Claimant's needs.

63. WRC contends that the proposed 474 hours per month of personal attendant care, plus IHSS hours estimated at 270 to 283 hours, would meet or exceed 1:1 staffing for 24 hours per day (which is approximately 744 hours per month). The present level of services is 888 hours per month; with IHSS of 283, the total of 1171 hours per month equates to 1:1 staffing for 38 hours per day (or, more practically, 2:1 staffing for 14 hours and 1:1 staffing for the remaining 8 hours each day). WRC acknowledges that its proposal is to establish a holding pattern for keeping Claimant safe while it tries to develop other options, whether they include SLS, a day program, residential placement or otherwise. However, there are no additional SLS options that WRC is presently aware of that are available for Claimant, as every option explored in the past has been unsuccessful or unavailable for one reason or another.

64. With respect to specialized supervision, the ALJ is aware that there was previously a service policy directly on point. The present WRC service standards (Exhibit 22) are effective September 1, 2010, and no longer refer to "specialized supervision" as a specific service. However, there is a policy on day care services (p. 11) which states they may be provided to persons over age 22 and are available "while family caregivers are at work or attending a vocational/educational program leading to future work, and have no other means to provide care and supervision."

Ultimate Findings of Fact Used to Decide the Case

65. Professional SLS services have been consistently recommended and are clearly needed for Claimant if his behaviors and quality of life are to improve. But, they have not been allowed to be employed. Most recent and many past assessments and evaluations conclude that Claimant's best chances are if he is placed out of the family's home, and in the experience of this ALJ and one of the vendors in this matter, SLS services are almost always provided in the Claimant's home, not the family's home. (See, for example, references to placing Claimant in a residential placement or providing SLS in a new location for Claimant that is not his parents' home, in Factual Findings 5, 6, 7 (footnote 1), 11, 21 and 31a.) The evidence established that Claimant's behaviors are, in great part, influenced by his interactions with family members and, sometimes, by Claimant's mere thought that they are in the garage or nearby. While sometimes these are helpful (e.g., Claimant's family knows best how to communicate with him and Claimant's sister can be a calming influence), more often the family's presence has interfered with the provision of services that are most likely to improve Claimant's situation. This has not occurred with a single vendor, or a select group of vendors. Rather, there is a cadre of vendors who make references to family interference with services. Yet, despite the need of Claimant's parents to reduce their involvement, and other good reasons for them to be less involved, they seem incapable of doing so. They feel there is always good justification to not follow the experts' advice. As such, the family has enabled the situation and prevented progress. For example, MSS provided its standard agreement for services in late 2009. When the family rejected it, MSS prepared a specific contract in January 2010. Despite the family having signed that agreement in late March 2011, there are still contract terms with which the family has not complied. During all this time, the situation for Claimant certainly has not gotten better. Properly structured and utilized behavioral supports have a good probability of being successful with Claimant. His family is urged to do everything they can to allow those services to commence.

LEGAL CONCLUSIONS

Rules of General Application

1. Claimant's services are provided by WRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.³ A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established.

³ All further statutory references are to the Welfare and Institutions Code.

2. In enacting the Lanterman Act, the Legislature codified the state's responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as WRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Under section 4512, subdivision (b), the determination of which services and supports are necessary for each consumer shall be made through the IPP process. The determination is made on the basis of the needs and preferences of the consumer, and shall include consideration of a range of service options, the effectiveness in meeting the goal, and the cost-effectiveness of each option. Thus, regional centers are responsible for developing and implementing an IPP, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities," in pertinent part, as follows:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . .

4. The Lanterman Act does not require regional centers to secure every service with every parent's chosen provider. While Claimant's parents' desires are of course to be taken into consideration, there are other factors which must be considered, some established by statute and others by practicality. For example, although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b) & 4646, subd. (a).) Cost effectiveness means obtaining the optimum results from the expenditure. (Cal. Code Regs., tit. 17, § 58501, subd. (a)(6).) The Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., Code §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) A regional center is not required to provide all of the services which a client may require, but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.) Further, a regional center is obligated to assess the projected annual costs of the consumer's supported living assistance, as determined through the IPP process, before SLS is provided. (Cal. Code Regs., title 17, § 58617.)

5. The family plays a role in the process of planning services. Section 4501 states, in part, that the complexities of providing these services require coordination of many state and community agencies, and that a consumer and family “shall have a leadership role in service design” and should be “empowered to make choices in all life areas.” Further, the Legislature specifically found that the mere existence and delivery of services was not enough—those agencies must “produce evidence that their services have resulted in consumer or family empowerment.” Services and supports provided by a regional center shall be flexible and individually tailored to the consumer and family (§4648, subd. (a)(2)), and regional centers must consider whether the consumer and his family are satisfied with the services being offered, and whether reasonable progress is being made. (§4648, subd. (a)(7).) One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (§ 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), and 4791).

6. However, the family does not unilaterally control the provision of services or selection of providers and must cooperate in the process. A person who seeks benefits from a regional center must bear the burden of providing information, and submitting to reasonable exams and assessments. (See Civil Code section 3521: “He who takes the benefit must bear the burden.”) Section 4646 specifically provides that IPP’s “shall be prepared jointly by the planning team.” That section further provides that “decisions concerning the consumer’s goals, objectives, and services and supports that will be included in the consumer’s IPP and purchased by the regional center . . . shall be made by agreement between the regional center representative and the consumer” or his representatives. Under section 4646, subdivision (a), the planning process is to take into account the needs and preferences of the consumer and his or her family, “where appropriate.” It is not the intention of the Legislature to have IPP programming and implementation of that programming decided unilaterally, either by a consumer or his representatives or by the regional center.

7. It must be understood both by the parents and the Service Agency that a balance of reasonableness and cooperation must be maintained when seeking to identify and implement the service needs of Claimant. The Lanterman Act requires that all purchases of services be secured for, and calculated to meet the needs of, the consumer. Consumer preferences can not relieve the regional center from its obligation under the Lanterman Act to administer the Act and expend public funds in a program-effective and cost-effective manner. Administering the Act as intended by the Legislature includes properly assessing, identifying and providing for specifically identifiable services, in a manner which allows measurement of the effectiveness of those services against agreed-upon goals and objectives. Because it is so important that all services provided are appropriately calculated to meet a consumer’s needs as planned, it is imperative that there exists the highest degree of cooperation from all participants in planning and implementing Claimant’s services.

8. Of course, parents can refuse to do anything that they feel works to the detriment of their children. In this case, Claimant's mother is his conservator and can legally make decisions for him. However, parental interference with efforts to provide needed services and supports may have the unintended consequence of preventing those services from reaching their full potential to help a consumer meet the goals of the Lanterman Act. If services cannot be effectively delivered, monitored, and measured against goals and objectives, the regional center may be under no obligation to serve that consumer. It follows that Claimant's family must facilitate the Service Agency's attempt to deliver the services and supports that have been identified. As noted in *Wagner v. Short* (USDC, D. Md. 1999) 63 F. Supp.2d 672, 678, dealing with special education needs, where parents refused to cooperate in the service planning process by not allowing access to assessments and records, the agency had insufficient information to complete the planning process and would not be found liable for the failure to secure the services needed. It would "defy logic" to find the agency at fault when the parents were unwilling to cooperate in the process.

9. When the parties involved in planning the consumer's services cannot reach an agreement, it is appropriate to take that disagreement to a fair hearing, present relevant evidence, and have a decision prepared to resolve the issue. (See sections 4646, subd. (g), 4710, 4710.5, 4710.7 and 4712.) However, a fair hearing should always be viewed as a last resort. The emphasis of the Act, found repeatedly throughout and with some of these references noted above, is on the spirit of cooperation in designing and implementing services for the good of the consumer.

10. With respect to IHSS hours, by law, the Service Agency is required to determine if the needed services can be obtained from other sources, usually denoted as "generic" sources or agencies. This legal obligation is found in several places. For example, section 4646.5, subdivision (a)(4), provides that the IPP should include "A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources" Further, under section 4648, subdivision (a)(8), a regional center shall not use its funds for a service when another agency "has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." WRC is required by law to account for the use of Claimant's IHSS hours under the circumstances of this case, and the continued failure of Claimant's family to provide that information has hampered WRC and necessitated it to rely on assumptions of how much IHSS is received for Claimant and how it can be used.

11. Respite services have been affected by a recent change in the law. The Legislature has recently enacted section 4686.5, subdivision (a)(2), which provides that a regional center shall not purchase more than 90 hours of in-home respite services in a quarter. A regional center may grant an exemption to that limitation only if it is demonstrated that the intensity of the consumer's case and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there

is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer. (§ 4686.5, subd. (a)(3).)

Conclusions on the Issues

12. Issue 1: Should the Service Agency fund 744 hours per month of supported living services for Claimant? Although the parties agreed that this issue can be determined by the ALJ, the facts do not present this as an issue. MSS is apparently still available to provide SLS to Claimant if the issues of door locks, outlets and family cooperation can be resolved. There are also legitimate issues of how medical needs are to be addressed while MSS starts its work. There was no indication of any action by WRC to prevent MSS from going forward. The MSS evaluation includes proposed hours of services and cost estimates (Factual Finding 31e), which proposed 744 hours per month plus transition services and an administrative fee. There was no indication from WRC that it was unwilling to accept these costs. Rather, MSS was not able to commence services for more than a few days before issues arose, and the family, WRC and MSS have not been able to resolve all of the issues that remain. More than a year has passed. The family is urged to address MSS's concerns about locks and outlets, and not by pointing out that these items have not been an issue to other vendors. If these two items are fixed, as MSS requests, then two reasons that MSS is not now providing services will be resolved. An order will be issued for WRC to fund 744 hours per month of supported living services for Claimant by MSS. However, the ALJ has no authority over MSS in this matter and it is likely that MSS won't proceed until the items it has listed (locks, outlets and family cooperation) are agreed to, and acted upon, by Claimant's family. Claimant's family is urged to comply so that these services can begin, as they are more likely to help Claimant than the present caretaker services.

13a. Issue 2: May the Service Agency change Claimant's services in the following ways: terminate funding for specialized supervision, reduce respite from 100 hours per month to 30 hours per month, and change personal assistant services hours from 24 hours per month to 474 hours per month? Each of these service categories will be discussed separately.

13b. Under a technical application of the WRC service policy on day care, as it applies to Claimant's specialized supervision, Claimant does not qualify for this service. It appears that WRC has provided the service for a period long after Claimant no longer qualified. However, WRC is not obligated to continue applying an exception to its service standard and may terminate funding for specialized supervision.

13c. Respite is limited by the recent change in the law to 90 hours per quarter, or 30 hours per month, unless the exception to this limit applies. It may be that Claimant would qualify for the exception, as he has an intense need for supervision, but WRC cannot make a proper determination of the exception without knowing how the family presently uses the respite hours granted as well as the IHSS hours. The family has not

complied with requests to supply this information. Therefore, WRC may reduce respite from 100 hours per month to 30 hours per month.

13d. It was not established that 474 hours per month of personal assistant services will be enough to maintain Claimant in a safe environment while living at home. Rather, 720 hours per month of personal assistant services is necessary, based on the reasoning below. Even though WRC does not know how IHSS and respite hours are being utilized, it became clear during the hearing that IHSS hours are used to pay Claimant's father and sister (and, perhaps, his mother) for providing care. This seems at cross purposes with the desires of Claimant's parents to reduce the amount of care they need to provide. However, the ALJ has no authority to order Claimant's parents to obtain paid workers to provide IHSS services, and WRC must account for the use of generic resources. The conclusion that 474 hours per month of personal assistant services is insufficient is based on the totality of the evidence and the proposal by MSS (Exhibit 15) for staffing for their SLS plan, which has a higher degree of involvement with Claimant by virtue of its goals of modifying his challenging behaviors. MSS suggested 2:1 staffing from 2 p.m. to 10 p.m., 1:1 staffing from 10 p.m. to 6 a.m., and IHSS staffing for Claimant's sleep hours of 6 a.m. to 2 p.m. This equates to 24 hours per day (which equals 720 hours per month) of MSS staff and eight hours per day of IHSS staffing. Even though personal assistant services are not the same as the SLS that MSS proposed to provide, WRC did not submit convincing evidence that the ratio of providers could be safely reduced below the level recommended by MSS, and Claimant presented evidence that his situation and behaviors are such that this ratio is necessary to maintain his safety.

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14. This Decision is not intended as anything more than a temporary solution to address the present circumstances. These personal attendant services are not designed to ameliorate Claimant's behaviors; rather, they should maintain him in a safe environment while the family attempts to make the arrangements necessary for MSS to begin providing SLS. The family's hopeful commitment to this process, without unreasonable reservations or delays, holds the highest hope, under the evidence as presented, of addressing Claimant's situation and improving it.

ORDER

Claimant's appeals of the Service Agency's decisions are denied in part and granted in part. The Service Agency is ordered to fund 744 hours per month of supported living services for Claimant. Until supported living services are begun, the Service Agency may change Claimant's services in the following ways: terminate funding for specialized supervision, reduce respite from 100 hours per month to 30 hours per month, and change personal assistant services hours from 24 hours per month to 720 hours per month

Dated: January 17, 2012.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.